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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Oakville, Raymond and
South Bend, Washington)

) MM Docket No. 00-41
)
) RM-9369
)
)
)

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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MAY 18 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS

On April 27, 2000, Comments were filed in this proceeding by Jodesha Broadcasting, Inc. ("Jodesha"), proponent of the subject rulemaking proposal, and on May 3, 2000, Comments in Opposition to the Proposed Rulemaking were filed by 3 cities, Inc. ("3 Cities"). The instant Reply is directed to the Comments of Jodesha.

In its Comments, 3 Cities noted a number of defects in the Jodesha proposal, not the least of those being that the proposed "Community " of Oakville did not meet the threshold minimum to be considered by the FCC as a "community" for allotment purposes, and that Jodesha had failed to carry its burden to submit factual data necessary to support a claim of "community"; that the one item that was submitted as a "fact" i.e. the population of Oakville, was not a "fact" but was a number inflated by a factor of 35% over the true U.S. census number; that the obvious attempt to relocate the station to a de facto Olympia, Washington, station required a Tuck/Huntington showing which was not

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submitted (and could not be since it would only serve to establish that fact, i.e. that the proposal to add a class C1 high-powered FM station to serve the transmission needs of a bedroom enclave of 493 persons on the edge of Olympia is simply a ruse to add another station reception service to the much larger city of Olympia); and that the proposal to take the only operating station from the community of South Bend, ostensibly to replace it with a new vacant allocation, for which Jodesha made no commitment to apply, was the total antithesis of long-established FCC policy and fatal to the proposal.

In its Comments, Jodesha had the opportunity to again review its original proposal and to supply further facts and argument to seek to carry its affirmative burden to demonstrate compliance with FCC Rules and the Public Interest. Reference to the Comments filed by Jodesha shows that it did virtually nothing. 1/ The alleged "community " of Oakville remains an unknown cipher, nothing more than a group of less than 500 people living on the outskirts of Olympia, Washington, with no indication whatsoever of any independent existence or function beyond simply being a group of people living 'next to Olympia'.

In its proposal, as it suggested moving existing stations from town to town like a big game of checkers, it turns out to be more of a pyramid scheme, where the last person (town) is left

1/ To the extent that Jodesha did finally submit any data on gains and losses to be expected under its proposal, the deficiencies in that showing are addressed in the attached Engineering Statement.

holding the bag. In this case, Jodesha was not reluctant to indicate it would apply for and construct stations on the new allocations to Oakville (Olympia) and Raymond but there was a deafening silence when it came to South Bend. South bend has an existing operating station which undoubtedly suits its residents just fine. But Jodesha needs South Bend's station to prop up its own scheme for Oakville and Raymond, so it proposes to simply take that station from South Bend and "replacing" that existing service with a naked allocation, an unacceptable "substitution" in the best of cases, but far more so here since Jodesha, wise enough to state its commitment for the Oakville and Raymond allocations suddenly lost sight of the needs of South Bend and made no commitment whatsoever to that allocation change.

And just so no one suffers under the delusion that the South Bend omission was some kind of twice-repeated incredible "oversight", we can refer to the closing paragraph of Jodesha's Comments filed April 27. It is even more specific there than in the original proposal. It states its commitment for the allocations to Oakville and to Raymond and says not one word of commitment to the new allocation at South Bend. This should be a case of two strikes and you're out. In its original proposal and in its Comments, Jodesha demonstrated that it was fully aware of the importance of stating such a commitment to apply and construct for any proposed change in the allocation Table. Yet, in both cases it declined to offer such a commitment for the South Bend allocation.

If the Commission did not expect and receive such commitments for requested allotments, it would be in the uncomfortable position of changing the allocation table and then seeing it was all for nothing, with the new channel simply lying fallow. It would be far worse in the instant case where the proposal is to actually take not only a channel allotment but an operating station, the only operating station, from the town of South Bend, offering no commitment to anything in the future. Having deliberately ignored the legitimate interests of the people of South Bend in continuing their existing radio service, not once but twice, any 11th hour "commitment" offered by Jodesha in Reply pleadings should be seen as what it is, a "blow out patch" designed only to cover the defect for the time being, and not as a credible, acceptable, bona-fide commitment to the people of South Bend, or to the Commission.

As for Jodesha's alleged commitment to Oakville, its true interests in Olympia are even more obvious to behold when recognizing the application for a booster station for the existing Raymond station which was filed by Jodesha on February 10, 2000 (BNPFTB-20000211ABC). Despite the fact that KFMV(FM) is presently operating as a Class A station in Raymond, Jodesha has already filed an application for a booster station to take its signal far beyond its existing service contour to blanket Olympia. As stated in the application itself (on the third page of the Engineering Report), the purpose of the application is "...to serve shadowed portions of the KFMV(FM) service area in the vicinity of Olympia, Washington". Just two problems there: As

demonstrated by a map included in its own application, it would not just be the "vicinity" of Olympia, it would be Olympia. 2/ The other problem is that the application is not for the present Class A operation of KFMV but for an unbuilt construction permit which is itself, mutually exclusive with the current proposal of Jodesha to actually move the whole station from Raymond to "Oakville" (Olympia). 3/ For the matter at hand, the existence of the booster application filed by Jodesha is yet another piece of evidence that Jodesha's true intention here is to move its existing Raymond station out of Raymond to Olympia and that the designation of "Oakville" is a handy but disingenuous ploy and should not be credited.

In sum, the Comments filed by Jodesha did nothing to alleviate the patent deficiencies in its proposal as set forth in 3 Cities's Comments in Opposition. Oakville does not meet the Commission's threshold definition of a community for allocation purposes and the proposal must fail for that reason alone. Beyond that, all existing evidence, the relative size disparity, dependence, and location of Oakville in close proximity to

2/ A copy of the map taken from the Jodesha booster application and designated there as "Exhibit 11" is attached hereto. Although for some reason the map is devoid of city or highway designations, reference to an Atlas map confirms that the booster area encompasses the city of Olympia.

3/ Oddly enough, Jodesha itself apparently recognizes that the booster application is patently contrary to FCC rules since it candidly admitted in response to question 2(b) of the application that the booster would carry KFMV well past its existing contours and that therefore, on its face, "this application cannot be granted". 3 Cities will point this out to the Mass Media Bureau in an Informal Objection to the Booster application also being filed by 3 Cities.

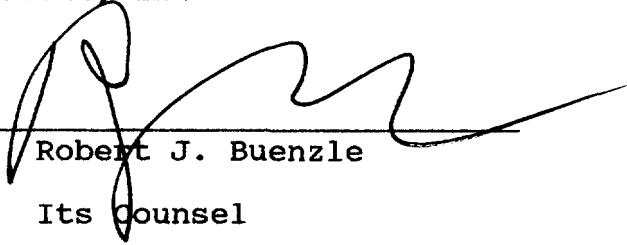
Olympia, as well as the booster application already filed by Jodesha documenting its desire to serve Olympia with its Raymond station, establish without a doubt that the proposal of a new transmission service for "Oakville" must be seen for what it is, a very thinly disguised proposal to simply remove the station out of Raymond to use it as a new additional reception service for Olympia. This is clearly contrary to FCC rules and Policies and the proposal must also fail for that reason. Finally, there is the matter of Jodesha's proposal to remove the only local service from South Bend, replacing it with a vacant channel for which Jodesha has twice declined to submit a commitment to apply and build a new station on that channel, leaving South Bend with nothing. This is also contrary to long-settled FCC Rules and Policies and is yet another reason why this proposal must be rejected.

Wherefore, 3 Cities, Inc. respectfully submits that the rulemaking proposal of Jodesha Broadcasting, Inc. is contrary to established FCC Rules and policies and to the public interest, and that it should be rejected and dismissed.

Respectfully submitted,

3 CITIES, INC.

by



Robert J. Buenzle

Its Counsel

Law Offices
Robert J. Buenzle
12110 Sunset Hills Road
Suite 450
Reston, Virginia 22090
(703) 715-3006

May 18, 2000

Reply Comments of
3 Cities, Inc.
in MM Docket No. 00-41
Oakville, Raymond and
South Bend, Washington
May 18, 2000

ATTACHMENT

Three Pages from Jodesha Booster Application
Filed February 10, 2000, File No. BNPFTB-20000211ABC

1. Purpose of Application

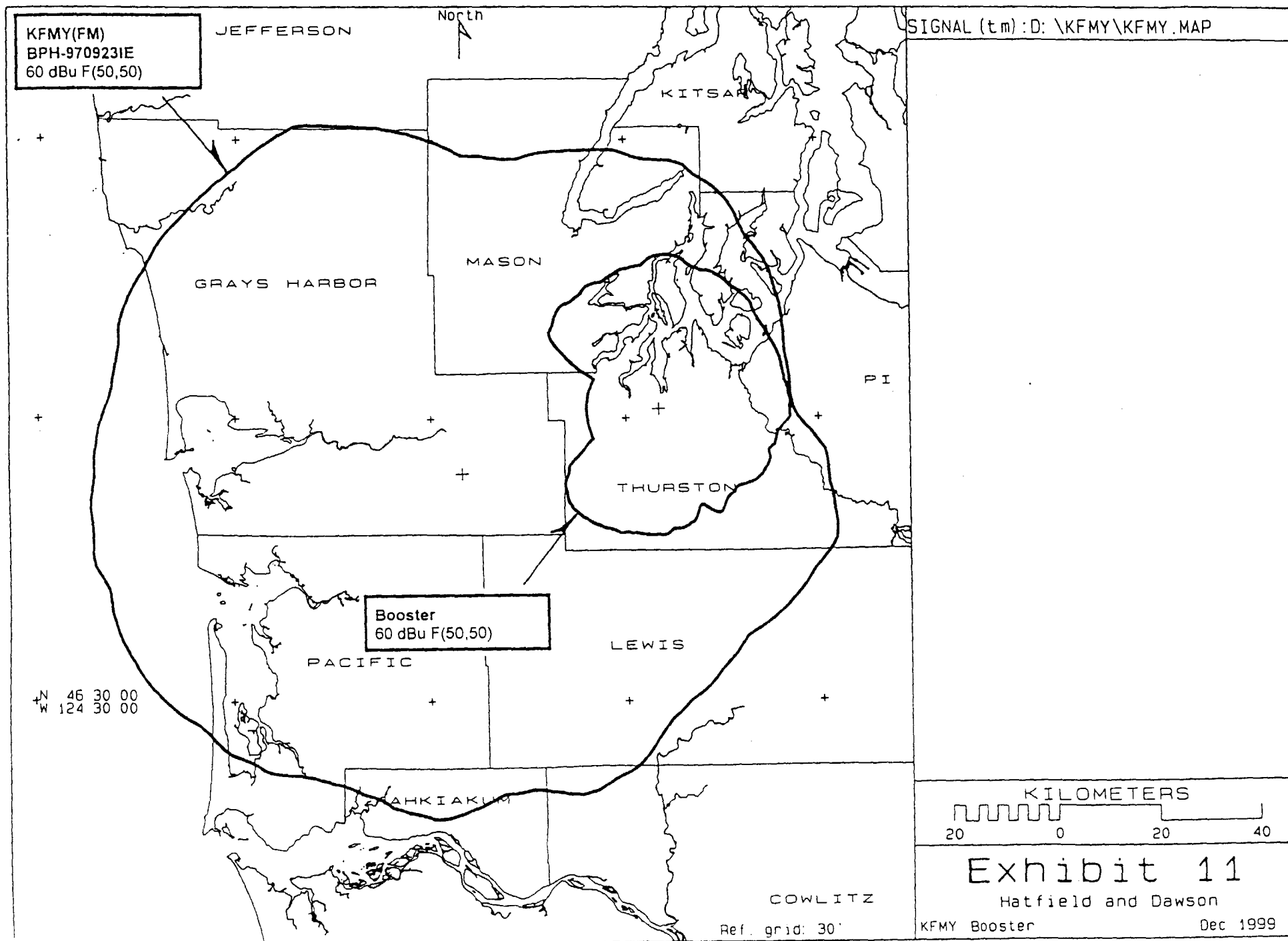
This Engineering Report is part of an application for a new FM booster to serve shadowed portions of the KFMY(FM) service area in the vicinity of Olympia, Washington by Jodesha Broadcasting, Inc. KFMY operates on FM channel 249C1 at Raymond, Washington. The proposed booster operation is on FM channel 249 (97.7 MHz) with an effective radiated power of 3.7 kilowatts.

2. Allocation Considerations

Exhibit 11 shows the relationship between the proposed booster 60 dBu F(50,50) contour and the KFMY 60 dBu F(50,50) contour (assuming KFMY operation with the facilities specified in BPH-9709231E). The facilities specified herein prevent extension of the proposed booster 60 dBu F(50,50) contour outside the KFMY 60 dBu F(50,50) contour.

There is sufficient distance between the proposed booster and any first-adjacent channel stations that the field strength of the first-adjacent channel station will be more than 6 dB greater than the booster field strength at all locations within the protected contour of the first-adjacent channel station. The attached channel study demonstrates compliance with the spacing requirements to facilities and allocations 10.6 and 10.8 MHz removed from channel 249.

From Jodesha Booster application
February 10, 2000; BNPFTB-20000211ABC



Section III - LEGAL QUALIFICATIONS

NOTE: Applicants for new stations only:

1. Applicant is (check one of the following):

- | | | |
|-------------------------------------|--|---|
| <input type="checkbox"/> Individual | <input type="checkbox"/> General Partnership | <input checked="" type="checkbox"/> Corporation |
| <input type="checkbox"/> Other | <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Unincorporated |

If the applicant is a legal entity other than an individual, partnership, corporation or unincorporated association, describe in an Exhibit the nature of the applicant.

Exhibit No.
n/a

- 2. (a) Is the applicant for an FM translator station the licensee or permittee of the commercial primary station being rebroadcast or does the applicant or any parties to the application have any interest or connection with the commercial primary station being rebroadcast? See 47 C.F.R. Section 74.1232(d).**

☒ Yes ☐ No

(b) If Yes, will the coverage contour of the translator station extend beyond the protected contour of the commercial primary station being rebroadcast? If YES, this application cannot be granted. See 47 C.F.R. Section 74.1232(d).

☒ Yes ☐ No

NOTE: Applicants who answer Yes to question (b) (and No to question (a)) are prohibited from receiving any support, before or after construction, either directly or indirectly from the commercial primary station being rebroadcast or from any person or entity having any interest whatsoever, or any connection with the primary FM station. Interested and connected parties include group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates. See 47 C.F.R. Section 74.1232(e).

- 3. (a) Is the applicant in compliance with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments?**

☒ Yes ☐ No

(b) Will any funds, credit, or other financial assistance for the construction, purchase or operation of the station(s) be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents?

☐ Yes ☒ No

If Yes, provide particulars as an Exhibit.

Exhibit No.
n/a

- 4. Has an adverse finding been made or an adverse final action been taken by any court or administrative body with respect to the applicant or parties to this application in a civil or criminal proceeding, brought under the provisions of any law related to the following: any felony; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination?**

☒ Yes ☐ No

If the answer is Yes, attach as an Exhibit a full disclosure of the persons and matters involved, including an identification of the court or administrative body and the proceeding (by dates and file numbers) and the disposition of the litigation. Where the requisite information has been earlier disclosed in connection with another application or as required by 47 U.S.C. Section 1.65(c), the applicant need only provide: (i) an identification of that previous submission by reference to the file number in the case of an application, the call letters of the station regarding which the application or Section 1.65 information was filed, and the date of filing; and (ii) a description of the previously reported matter.

Exhibit No.
n/a

3 Cities, Inc.
Post Office Box 7937
Olympia, WA 98507

Engineering Statement
Oakville, Raymond, and South Bend, Washington
MM Docket 00-41
May 2000

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F. W. Hannel, PE
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STATE OF ILLINOIS)
) SS:
COUNTY OF PEORIA)

F. W. Hannel, after being duly sworn upon oath,
deposes and states:

He is a registered Professional Engineer, by
examination, in the State of Illinois;

He is a graduate Electrical Engineer, holding Bachelor
of Science and Master of Science degrees, both in Electrical
Engineering;

His qualifications are a matter of public record and
have been accepted in prior filings and appearances requiring
scrutiny of his professional qualifications;

The attached Engineering Report was prepared by him
personally or under his supervision and direction and;

The facts stated herein are true, correct, and
complete to the best of his knowledge and belief.



May 17, 2000

F. W. Hannel, P.E.

F. W. Hannel, PE
10733 East Butherus Drive
Scottsdale, AZ 85259
480) 585-7475
Fax (815) 327-9559
<http://fwhannel.com>

3 Cities, Inc.
Post Office Box 7937
Olympia, WA 98507

Engineering Statement
Oakville, Raymond, and South Bend, Washington
MM Docket 00-41
May 2000

This firm has been retained by 3 Cities, Inc., ("3CI") licensee of Radio Station KXXO(FM), Olympia, Washington to prepare this engineering statement in the above captioned proceeding. The Commission issued a Notice of Proposed Rulemaking on March 10, 2000, which proposed channel substitutions in Oakville, Raymond and South Bend, Washington, and comments were filed on May 3, 2000 in the proceeding. Specifically, the petition filed by Jodesha Broadcasting, Inc., ("JBI"), licensee of Radio Station KSWW(FM), Raymond, Washington, and Radio Station KFMV(FM), South Bend, Washington, seeks the reallocation of both its existing stations to new communities, and proposes to allot the vacant and unapplied for FM Channel 300A at South Bend, Washington.

While Jodesha Broadcasting has submitted data showing aural service gain and loss areas in connection with the proposed reallocation, there is a higher allocation priority that is being violated. There are three communities involved in the Jodesha proposal, South Bend, Raymond and Oakville, Washington.¹ The Commission has established a priority system to evaluate the merits of allocation changes and the service area gains and losses are lower in priority than first local aural service. In the case here, Jodesha is seeking to remove a Class C1 channel from a community with a population of 2901 persons to a "community" of 493 persons. To replace the Class C1 channel, Jodesha proposes the allocation of the presently assigned Class C2 channel at South Bend, Washington be reassigned to Raymond. South Bend², population 1551

¹ Jodesha is proposing a first local aural service to Oakville, population 493 persons, and does not offer any of the indicia of community status of Oakville for allocation purposes beyond the undocumented claim that it is deserving of an FM Allocation, which hardly meets the threshold showing required to demonstrate community status for FM Allocation purposes.

² Population figures are attached as Exhibit E-1.

would be left with an allotment on FM Channel 300A for which there has been no expression of interest filed. The net result is of the channel changes is to remove the only aural service at South Bend, population 1551, and add an FM service at Oakville, population 493. These proposed changes result in a net reduction of first local service, and, as such, do not serve the public interest but only the private interest of the petitioner and the proposal must be denied.

3 Cities, Inc.
Post Office Box 7937
Olympia, WA 98507

Engineering Statement
Oakville, Raymond, and South Bend, Washington
MM Docket 00-41
May 2000

Exhibit E-1

1990 US Census Data
Database: C90STF1A
Summary Level: State--Place

South Bend city: FIPS.STATE=53, FIPS.PLACE90=65625

PERSONS

Universe: Persons

Total.....1551

1990 US Census Data
Database: C90STF1A
Summary Level: State--Place

Raymond city: FIPS.STATE=53, FIPS.PLACE90=57430

PERSONS

Universe: Persons

Total.....2901

1990 US Census Data
Database: C90STF1A
Summary Level: State--Place

Oakville city: FIPS.STATE=53, FIPS.PLACE90=50430

PERSONS

Universe: Persons

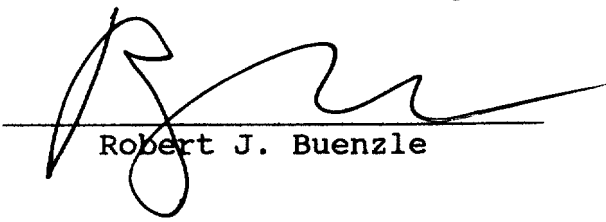
Total.....493

CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Reply Comments have been served by United States mail, postage prepaid this 18th day of May, 2000, upon the following:

* Sharon P. McDonald, Esq.
Federal Communications Commission
Allocations Branch, Mass Media Bureau
Portals II, Room 3-A247
445 12th Street S.W.
Washington, D.C. 20554

David Tillotson, Esq.
4606 Charleston Terrace, N.W.
Washington, D.C. 20007
Counsel for Jodesha Broadcasting



Robert J. Buenzle

* Hand-delivered